

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

March 18, 2015

City Council Chambers

MEMBERS PRESENT: Bill Burton, Linda Herbst, George Papandreas, and Jim Shaffer

MEMBERS ABSENT: Leanne Cardoso

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER AND ROLL CALL: Burton called the meeting to order at 6:30 PM and read the standard explanation of the how the Board conducts business and rules for public comments.

II. MATTERS OF BUSINESS:

A. Minutes for the February 18, 2015 hearing: Papandreas moved to approve as presented; seconded by Herbst. Motion carried unanimously with Burton abstaining due to absence.

III. UNFINISHED BUSINESS: None

IV. NEW BUSINESS:

V. NEW BUSINESS:

A. V15-20 and V15-21 / Mon County Habitat for Humanity / Addison Circle: Request by Evan Zuverink, on behalf of Mon County Habitat for Humanity, for variance relief from Article 1335.04 concerning a setback encroachment; Tax Map 24, p/o Parcel 41; R-1A, Single-Family Residential District.

Fletcher presented the Staff Report.

Burton recognized Evan Zuverink of Mon County Habitat for Humanity who stated the variances are being requested due to the tightness of the project and concurred with the Staff Report.

There being no comments or questions by the Board, Burton asked if anyone was present to speak in favor of or in opposition to the petitions V15-20 and/or V15-21. There being none, Burton declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations for V15-20.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V15-20 as revised; seconded by Herbst. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

This request will only affect one individual building lot and should have no effect on public health, safety, or the rights of adjacent property owners.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The configuration of the east side boundary line of “Lot 9” is not parallel with the west side boundary line resulting in a front parcel width that is less than the rear parcel width. This configuration appears to result, in part, on the cul-de-sac layout of the entire development. The minimum side setback standard could be observed by moving the proposed single-family structure deeper into the site (further away from the street). However, doing so would exceed the maximum front setback standard requiring related variance relief.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Variance relief will permit the construction of a single-family dwelling on a newly created, but irregularly shaped parcel.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

Variance relief will permit the construction of a single-family dwelling on a newly created parcel that meets R-1A District minimum lot frontage and minimum lot area standards.

Shaffer moved to approve V15-20 as requested; seconded by Papandreas. The motion carried unanimously.

Fletcher read the Staff recommendations for Case No. V15-21.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V15-21 as revised; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

This request will only affect one individual building lot and should have no effect on public health, safety, or the rights of adjacent property owners.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The configuration of the side parcel boundary lines of “Lot 5” is not parallel resulting in a parcel width that is much narrower at the front than the rear. This configuration results, in part, on the cul-de-sac layout of the entire development. The maximum front setback standard could be observed by moving the proposed single-family structure forward or closer to the street. However, doing so would encroach into the minimum side setback standard requiring related variance relief.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable

use of the land, because:

Variance relief will permit the construction of a single-family dwelling on a newly created, but irregularly shaped parcel.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

Variance relief will permit the construction of a single-family dwelling on a newly created parcel that meets R-1A District minimum lot frontage and minimum lot area standards.

Shaffer moved to approve V15-21 as requested; seconded by Shaffer. The motion carried unanimously.

Burton reminded Mr. Zuverink that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- B. V15-22 / Denny's Corporation / Hornbeck Road:** Request by Scott Copen of Cheat Road Engineering, Inc., on behalf of Grate Enterprises, Inc., for variance relief from Article 1353.07(C) concerning cladding materials; Tax Map 64, Parcel 4; B-5, Shopping Center District.

Fletcher presented the Staff Report.

Burton recognized Scott Copen of Cheat Road Engineering who stated that Grate Enterprises would be constructing the new Denny's Restaurant that will be located next to Walmart. The variance request is to use cultured stone and EIFS in order to maintain the corporate standard.

There being no comments or questions by the Board, Burton asked if anyone was present to speak in favor of or in opposition to the request. There being none, Burton declared the public hearing closed and asked for Staff's recommendations.

Fletcher read the Staff recommendations.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V15-22 as revised; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The requested use of alternative exterior building finished has no impact on public health, safety or welfare. The adjacent properties are all commercial and will not be harmed because of the exterior building finishes.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The variance is requested so the proposed building can be constructed in compliance with corporate standards. Denny's Corporation strives to maintain a uniform look between its individual franchise locations to ensure familiarity to its patrons; however Denny's corporate standards that are required for

its franchisees does not meet current zoning requirements.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Denny's corporation does not allow alternate building materials, therefore for the proposed project to be feasible, a variance must be granted.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

Use of the proposed building materials does not allow the property to be used in matter not in compliance with the zoning code. Zoning ordinances with respect to exterior finishes are for the purposed of uniformity. However, the existing commercial properties in this area we constructed prior to incorporation into the City and do not comply with the zoning code. Therefore, granting of this variance will not cause any less uniformity for future development in this area.

Papandreas moved to approve V15-22 as revised with Staff recommended conditions; seconded by Shaffer. The motion carried unanimously.

NOTE: The following conditions were included in the motion.

1. That the location, area, and extent of the cultured masonry materials (stone and/or brick) that is illustrated on the elevations submitted with the petitioner's variance application may not be reduced.
2. That the EIFS clad facades, to the satisfaction of the Planning Division, must emulate cast concrete on the front and side facades.

Burton reminded Mr. Copen that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

C. CU15-03, V15-11 thru V15-19 / American Campus Communities / University Avenue & Jones Avenue: Request by Lisa Mardis of Project Management Services, on behalf of American Campus Communities, for variance relief from Article 1361.03(Q)(4) concerning location of surface parking lot; Tax Map 14A, Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 10.1, and 10.2 and Tax Map 20, Parcels 200, 201, 202, 203, 204, 205, 206, 207, and 208; R-3, Multi-Family Residential District.

The Board decided to combine the public hearings for Cases CU15-03 and V15-11 thru V15-19.

Burton introduced Chuck Carole of American Campus Communities (ACC) who provided an overview of the company. Paul Walker of Paradigm Architecture presented a PowerPoint presentation to further explain the proposed project. An electronic copy of the presentation was given to the Planning Division to be kept in the project file.

Shaffer asked if there would be egress onto Jones Avenue. Walker stated there would be no egress onto Jones Avenue in order to keep vehicular traffic off of Jones Avenue. There will be a connection to Jones Avenue for emergency vehicles only.

Walker stated there are significant grade changes from Jones Avenue to University Avenue and the north side of the property to the south and therefore the buildings are positioned according to the changes. The community center was positioned to accommodate vertical circulation.

Burton asked if the elevators will be located in the community center. Walker explained that elevators can be accessed from the community center and also through the parking area.

Burton asked if all buildings fully meet ADA requirements. Walker explained that only one building is fully ADA compliant and the other two buildings meet the minimum ADA requirements.

Herbst asked if there will be access to the apartments from the community center. Walker confirmed. Herbst asked where the entrances were located along University Avenue. Walker explained that primary access will be through the community center.

Burton asked if all units will exit through an internal hallway rather than directly to the outside. Walker confirmed.

Burton asked if the seven (7) staff members would have their own rooms. Carole explained that Staff residents are mixed in with others and do not have their own room.

Shaffer asked for an RA (resident assistant) to student ration. Carole stated they have 6 RA's to 536 beds.

Shaffer referred to the pool area and asked for the plans. Carole stated they are not set on the pool and it could be a spa or something alike. If it is a pool then it will be located outside and heated so it can be used more often throughout the year.

Papandreas asked where trash would be located. Walker explained there would be a compactor connected to the community center and remote dumpster locations that would be emptied into the compactor as needed by the development staff.

Burton asked if they had a parking plan in the event more than 50% of residents have vehicles. Carole noted that parking is the hardest thing to determine. ACC has more than 170 properties across the nation and they conduct a market research and implement focus groups prior to developing parking plans. Carole believes the parking proposed is more than adequate to satisfy the development's parking requirements.

Burton asked if units would come with a washer and dryer. Carole confirmed and stated that each unit will be fully furnished.

Burton noted the area has increased loose soil and clay and expressed concerns with grade changes in the slope of the land. Carole stated that topography is an issue with the vast majority of developments in Morgantown. Preliminary geotechnical investigations have been conducted but there are more studies to be done which are scheduled to be conducted after approvals from the Planning Commission and Board of Zoning Appeals.

Burton asked when ACC plans to implement the proposed project. Carole stated they would like to break ground in May 2015, but will need to go through the building permit process prior to initiating work. Plans are to complete the project by Fall of 2016.

There being no further comments or questions by the Board, Burton asked if anyone was present to speak in favor of or in opposition to the conditional use and variance petitioners relating to the development.

Burton recognized Frank Scafella of 346 Virginia Avenue who expressed favor for the proposed project. ACC has been very considerate of concerns expressed by the Wiles Hill Neighborhood Association and have altered plans to keep traffic from coming through that neighborhood. The project was also moved back 48 inches in order to accommodate a bigger intersection and allow for room to access the parking garage.

Shaffer asked if the Wiles Hill Neighborhood Association is completely on board with this project. Scafella expressed that a majority are on board and noted that no one had come out to speak in opposition to the project.

Papandreas asked if there will be a three-lane intersection on University Avenue that will include a turn lane into the garage. Scafella confirmed and explained that the north lane of University Avenue will be made into a left turning lane and another lane going north will be created.

There being no further public comments, Burton declared the public hearing closed and asked for Staff's recommendations.

Fletcher noted a letter was received by Staff in favor of the project by Richard Dumas and an email was received by Staff in opposition of the project by Zane Shuck.

Fletcher read the Staff recommendations for V15-16.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V15-16 as revised; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Continued efforts to increase residential density in the downtown area, within walking distance of primary residential destination points, and within a well-served transit corridor should serve to aid in relieving housing development demand in outlying areas of Monongalia County that contribute to traffic congestion within the City of Morgantown. The current Sunnyside Commons development is bordered by Jones Avenue, University Avenue, and Highview Place. The off-site parking area is bordered by Jones Avenue, Overhill Street, and Quay Street. Given the public right-of-ways and the steep topography, surface parking lots appear to be the best parking plan for this realty.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The design professionals have worked diligently to ensure that all on-site parking areas have been utilized to the fullest and meet the Planning and Zoning Code not to exceed a 10% grade. However, due to the steep terrain and the Fire Department requirement for hammerhead turn-arounds to be located in the uppermost surface parking lot in conjunction with the emergency access to/from Jones Avenue, the only alternate was to obtain ownership of an off-site parking facility. The off-site surface parking facility will be constructed by West Virginia University and transferred to ACC post construction. The redevelopment of the Sunnyside Commons site as proposed represents a unique opportunity to provide desired residential densities. The proposed redevelopment reflects minimum parking

obligations within the adjoining zoning districts, which furthers smart growth principals including compact building design and walkability and will promote regular use of alternative modes of transportation which include increasing public transit ridership.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The subject realty, located at the fringe of the Sunnyside Overlay District, is bordered by University Avenue, Jones Avenue, and Highview Avenue, limiting adequate redevelopment area for off-street parking not located at an intersection. The topography of the site further appears to limit vehicular storage. The design professionals have worked diligently to assure compliance with all parking regulations. The off-site parking area at the intersection of Overhill Street, Jones Avenue, and Quay Street will be located behind the West Virginia University garage that is currently under construction. The surface parking area, which will also be constructed by West Virginia University and transferred to ACC will contain approximately forty-one (41) spaces and will be accessible from Quay Street.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

By granting this variance, the developer will be able to redevelop an aging and underutilized multi-family development with requisite parking. The realty is located on the fringe of the Sunnyside Overlay Districts, has steep terrain, and is bordered by public numerous right-of-ways. The redevelopment of the Sunnyside Commons site as proposed represents a unique opportunity to provide desired residential densities. The proposed redevelopment reflects minimum parking obligations within the adjoining zoning districts, which furthers smart growth principals including compact building design and walkability and will promote regular use of alternative modes of transportation which include increasing public transit ridership.

Shaffer moved to approve V15-16 to permit the development of a surface parking lot at the intersections of Jones Avenue / Highview Place, Jones Avenue / Overhill Street, and Overhill Street Quay Street as requested without conditions; seconded by Papandreas and carried unanimously.

Fletcher read the Staff recommendations for CU15-03

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for CU15-03 as revised; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

The proposed surface parking lot located at the intersection of Quay and Overhill Streets is currently being constructed by West Virginia University and will be transferred to American Campus Communities (ACC) after completion. The surface parking lot will be utilized by the proposed development to fulfill the parking requirement and supports student housing at the edge of campus(es) thereby reducing commute trips from housing located outside of the City and resultant congestion. The applicant is proposing to utilize approximately forty-one (41) parking spaces. The surface lot is approximately eighty-eight (88) feet from the proposed development site. In conjunction with eliminating access into the Wiles Hill Neighborhood, this surface lot will remove any student parking on Jones Avenue that has been associated with Sunnyside Commons. Alternate modes of transportation are readily available within the University Avenue corridor where increased multi-family residential is a desired development pattern in the Sunnyside-Up Neighborhood Revitalization Plan and the City's Comprehensive Plan. The proposed site plan identifies the parcel configuration and setbacks for the subject development site, which illustrate that limited buildable area appears to remain for any type of development given the geometry of the parcel, required building envelope, and the topography of the

site.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

The proposed off-site parking facility will be constructed prior to ownership. However, the surface lot will meet minimum aisle width and parking stall size, therefore not jeopardizing life safety requirements. The parking facility will be well lit for safety.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

The proposed off-site surface parking facility will be constructed prior to ownership and is located below the grade of Jones Avenue and should not adversely impact existing light distribution or air flow patterns.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

The Planning and Zoning provides the opportunity of dedicating off-site parking to mitigate overcrowding of development patterns. No new parking structure, facility, or use is proposed as the location of the off-site parking facility will be an existing parking lot once the realty is transferred from WVU to the developer.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

The Planning and Zoning code provides the opportunity of dedicating off-site parking to mitigate population congestion. Additionally, increased multi-family residential density along University Avenue Corridor is a desired development pattern in the Sunnyside-Up Neighborhood Revitalization Plan and city's Comprehensive Plan. The petitioner affirms that most of the current Sunnyside Commons inhabitants walk to the campus or utilize the University's or public transportation. The location of the project site supports student housing at the edge of campus thereby reducing commute trips from housing outside the city and resultant congestion.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The proposed off-site surface parking facility will be constructed prior to ownership by ACC and is located below the grade of Jones Avenue. The parking facility will act as a deterrent to any Sunnyside Common resident attempting to park on Jones Avenue. The petitioner affirms that most of their other tenants in the area walk to campus or utilize the University's or public transportation. The location of the project site supports student housing at the edge of campus thereby reducing commute trips from housing outside the city and resultant congestion. The conditional use request should neither increase nor decrease demand for said public infrastructure. The proposed development and off-premise parking does not appear to require public facilities or services beyond those existing conditions.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

The proposed off-site parking lot appears necessary to continue private sector efforts of increased residential density in the Sunnyside area thereby adding value and incentive for continued redevelopment and property maintenance. New construction should further existing market value and interest in continued development. The off-site parking facility should also serve as a deterrent of students taking on-street parking away from the residents of the Wiles Hill Neighborhood. The proposed conditional off-premise parking use will be located within an existing vicinity parking area and will contain the required signage associated with other off-site parking approvals.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

The redevelopment of Sunnyside Commons creates an opportunity to increase residential density in the Sunnyside area, on the fringe of campus(es). The proposed off-site parking facility will be constructed WVU prior to transfer of the realty to the petitioner.

Shaffer moved to approve CU15-03 as requested with conditions; seconded by Papandreas and carried unanimously.

NOTE: The following condition was included in the motion.

1. That all related provisions set forth in Article 1365.07(C), (D), and (E) be observed.

Fletcher read the Staff recommendations for V15-19.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V15-19 as revised; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The redevelopment of this property without the non-residential component will not harm this or surrounding properties in the vicinity as there currently are no non-residential uses located on this realty. The potential to increase desirable student housing could actually improve the area by inspiring further development and the removal of blighted properties. The physical constraints, such as the steep grade, make market absorption of commercial space along this section of a University Avenue challenging and uncertain.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

While the Planning and Zoning Code states that University Avenue is a “Primary Street,” lack of pedestrian traffic and terrain that does not permit for the required parking that would be needed for commercial use dictates otherwise. Further, the Code does not recognize site constraints associated with the east side of University Avenue, specifically the steep terrain this far north from the small re-emerging business area on University Avenue. Overbuilding commercial space could result in absorption rates that do not meet conventional development financing standards. High commercial space vacancy rates in resulting from overbuilding commercial space long this corridor could undermine long-term commercial use viability.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The City’s Planning and Zoning Code, relative to the Sunnyside Overlay Districts, does not appear to reflect realistic opportunities and terrain and market viability constraints. The requirement of providing commercial space along the entire length of University Avenue in the Sunnyside Overlay District attempts to create retail activity rather than preserve or expand existing uses. Currently, there are no mixed-use or commercial uses located this far north on University Avenue. Historically within the area, mixed-use and commercial uses have been limited to University Avenue south of Third Street. Other development that has received a similar variance includes 116 Third Street, 152 Third Street, 146 Third Street, Glenlock North, 507 Beechurst Avenue among others.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

Overbuilding commercial space could result in absorption rates that do not meet conventional development financing standards. High commercial space vacancy rates resulting from overbuilding commercial space along this corridor could undermine long-term commercial use viability.

Papandreas moved to approve V15-19 to permit relief from dedicating at least sixty (60) percent of the ground floor space along University Avenue for commercial use [Article 1361.03(Q)(1)] as requested without conditions; seconded by Shaffer and carried unanimously.

Fletcher read the Staff recommendations for V15-13.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V15-13 as revised; seconded by Herbst. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Building A, predominant structure along University Avenue appears to be 4-5 stories, with stepped heights as the building proceeds north on University Avenue with a maximum height of 55'9". The proposed design of the development site will cluster the majority of living space in Building A and Building B along University Avenue, a primary street as defined in Article 1361.02. This design will relegate most resident and pedestrian activities to the University Avenue corridor and vicinity, thus funneling any potentially adverse impacts away from existing single and two-family structures on Jones Avenue and Highview Place. The variance sought here – to extend the height of portions of Building A to 5 stories – would permit the realization of a development design that increases density of living space along a primary street that is well-lit, well-served, and on public transit routes. The height difference and architectural design on Building A, community center, will create a sense of place and a focal point on a primary street.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The grade of University Avenue, the proximity of Building "A" to University Avenue, and the steep slope of the development site rising away from University Avenue appears to contribute to portions of Building "A" having a fifth story while still observing the maximum building height standard as measured and calculated in feet.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Variance approval will permit a portion of Building A to encroach into the height requirement. This approval would eliminate the challenges presented by steep grades at the development site. Further, the variance would permit the realization of a development design that increases the density of infill residential structures along a primary street that is well-lit, well-served, and proximal to the main university campus. The topographical elevation challenges exhibited by the development site prohibit the construction of horizontally expansive structures. In order to build in such a way that maximizes permitted densities and satisfies open space requirements within the development site, construction must expand vertically upon the small amount of low-slope land available. The proposed redevelopment is contained in the R-3, Multi-family Residential District, the South Sunnyside Overlay District, and the Central Sunny side Overlay District. According to Article 1339.06 Building Height in the R-3 District is (A) The permitted maximum height shall be four (4) stories or fifty-five (55) feet, whichever is less, except as provided in Section 1363.02(A), Height Exceptions. A conditional use permit shall be required for buildings in excess of fifty-five (55) feet but less than eighty (80) feet. Concurrently, Article 1361.04 states that in the Sunnyside South Overlay District: (1) Buildings that contain non-residential uses on the ground floor may have a maximum height of eighty-eight (88) feet, provided all other requirements of the zoning ordinance are met. (2) Buildings taller than fifty-five (55) feet shall not require a conditional use permit. The South Sunnyside Overlay District does not address the issue of building height in stories measured from the front. Therefore it appears that the legislative intent of permitting a by-right height bonus of up to eighty (80) feet, based on elementary design and

construction common sense, is to permit, by-right, buildings taller than four (4) stories measured from the front. Otherwise, you would have four (4) 20-foot stories.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed redevelopment is contained in the R-3, Multi-family Residential District, the South Sunnyside Overlay District, and the Central Sunny side Overlay District. According to Article 1339.06 Building Height in the R-3 District is (A) The permitted maximum height shall be four (4) stories or fifty-five (55) feet, whichever is less, except as provided in Section 1363.02(A), Height Exceptions. A conditional use permit shall be required for buildings in excess of fifty-five (55) feet but less than eighty (80) feet. Concurrently, Article 1361.04 states that in the Sunnyside South Overlay District: (1) Buildings that contain non-residential uses on the ground floor may have a maximum height of eighty-eight (88) feet, provided all other requirements of the zoning ordinance are met. (2) Buildings taller than fifty-five (55) feet shall not require a conditional use permit. The South Sunnyside Overlay District does not address the issue of building height in stories measured from the front. Therefore it appears that the legislative intent of permitting a by-right height bonus of up to eighty (80) feet, based on elementary design and construction common sense, is to permit, by-right, buildings taller than four (4) stories measured from the front. Otherwise, you would have four (4) 20-foot stories.

Papandreas moved to approve V15-13 to exceed the maximum building height requirement in number of stories for portions of Building “A” [Article 1339.06(A)] as requested without conditions; seconded by Herbst. Motion carried unanimously.

Fletcher read the Staff recommendations for V15-14.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V15-14 as revised; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Building C of the proposed development is oriented onto a private street that contains requisite parking. Due to the terrain and placement of Building A, it appears Building C will not be visible for the most part from University Avenue and frontage not visible from Jones Avenue.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

Recent code changes permit the placement of more than one principal multi-family residential structures on a single realty. Due to the topography of the site, design professionals diligently situated buildings as to not interfere with the Wiles Hill Neighborhood by locating them closest to the primary street, which is University Avenue. Building C of the proposed development is oriented onto a private street that contains requisite parking. Due to the terrain and placement of Building A, it appears Building C will not be visible for the most part from University Avenue and frontage not visible from Jones Avenue.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Due to the steep topography and to eliminate disturbance with the Wiles Hill Neighborhood, the buildings were pushed west on the property near University Avenue. Variance relief will permit a reasonable use of the property and permit Building C to front a private roadway and parking leading to

Quay Street.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

In 2013, the Planning and Zoning Code was altered to permit more than one principal structure in the R-3 District. Given the steep terrain and the developer's promise to the Wiles Hill Neighborhood to severe access on to Jones Avenue, building placement was pushed west. Therefore, Building C does not face Jones Avenue but a private roadway with requisite parking. Approving this variance still meets the spirit and intent of the Planning and Zoning Code since it will front a private street.

Shaffer moved to approve V15-14 to permit Building "C" to be oriented toward the parking area [Article 1361.03(C)] as requested without conditions; seconded by Herbst. Motion carried unanimously.

Fletcher read the Staff recommendations for V15-18.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V15-18 as revised; seconded by Herbst. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The current Sunnyside Commons development consists of entry points on Jones Avenue with a main entrance on University Avenue. The design professionals worked diligently to ensure that the access from Jones Avenue would be vacated to further protect the single-family neighborhood east of the development. The main access for the redevelopment will remain on University Avenue with a connector street to the parking areas, which is necessary for fire department access. There will also be a gated ingress/egress on Jones Avenue for emergency vehicles only. The point of egress onto Quay Street is not conducive for a main entrance point due to right-of-way width and fire truck access.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The current Sunnyside Commons development consists of entry points on Jones Avenue with a main entrance on University Avenue. The design professionals worked diligently to ensure best access management practices due to the topography of the realty in relation with University Avenue. The access from Jones Avenue will be vacated to further protect the single-family neighborhood east of the development. The main access for the redevelopment will remain University Avenue which is necessary for fire department access. There will be a gated ingress/egress on Jones Avenue for emergency vehicles only. The Quay Street egress is not conducive for a main entrance point due to road width and fire truck access.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The current Sunnyside Commons development consists of entry points on Jones Avenue with a main entrance on University Avenue. With support from the Wiles Hill Neighborhood Association, the access point on Jones Avenue will be eliminated to thru traffic and only utilized by emergency vehicles with breakaway bollards. The design professionals worked diligently to ensure best access management practices by retaining the main access point for the redevelopment on University Avenue. This is necessary for fire department access. There will also be a point of egress onto Quay Street but is not conducive for a main entrance point due to right-of-way width and fire truck access.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

Article 1361.03(Q)(7) provides “Private parking areas shall be accessed from secondary streets and/or alleys. Access from primary streets shall only be utilized when other options are not available.” With the Wiles Hill Neighborhood Association supporting the removal of the Jones Street access point to thru traffic, the redevelopment will maintain the current main access point on University Avenue with an egress on to Quay Street. Due to the topography, the design professionals worked diligently to ensure best access management practices on University Avenue. This is necessary for fire department access.

Papandreas moved to approve V15-18 to permit access to parking areas from the primary Street of University Avenue [Article 1361.03(Q)(7)] as requested without conditions; seconded by Herbst. Motion carried unanimously.

Fletcher read the Staff recommendations for V15-12.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V15-12 as revised; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

A sidewalk does not currently exist on Highview Place and developing one would only serve three (3) houses on a dead-end street that is a little more than 400 feet in length. Extending the sidewalk further north may encourage pedestrians to cross illegally at the northern most point of the development site at the inside of the roadway curve and where site distance is limited by steep slopes on the east side of University Avenue.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The proposed eight-foot wide sidewalk extends north only to the northern stairs of Building “B” leaving approximately 65 feet of University Avenue frontage without a sidewalk. Said portion of University Avenue frontage where a sidewalk is not proposed leads to very steep slopes along the east side of University Avenue where continued development of sidewalks to the north on the east side is unlikely due to significant retaining walls that would be required. Further, approximately 1,000 feet of sidewalk and retaining walls would be required to connect the petitioner’s proposed sidewalk to at least Warrick Street on the east side of University Avenue. Developing a sidewalk along Highview Place may require retaining walls to support the sidewalk, may narrow the existing roadway width, and may result in the removal of on-street parking that currently benefits two (2) of the three (3) houses on Highview Place.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The proposed development appears to have been designed to channel pedestrian traffic away from Highview Place and Jones Avenue towards University Avenue. The proposed development should not increase pedestrian traffic demand on Highview Place. Steep slopes and the roadway curve on the east side of University Avenue between the development site and Warrick Street appears to leave continued sidewalk development on the east side of University Avenue unlikely given significant costs associated with reasonable anticipated hillside stabilization and retaining walls.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and

substantial justice done, because:

The proposed development significantly increases pedestrian amenities and connectivity along University Avenue, a transit shelter pad, and commendable internal sidewalk network connecting buildings to on-site and off-site parking areas.

Papandreas moved to approve V15-12 granting relief from constructing any sidewalk (6-foot minimum width) along the site's Highview Place frontage [Article 1339.07(F)] and relief from constructing a sidewalk the length of the principle site's University Avenue frontage and to permit a portion of the sidewalk (pedestrian way) along the front of Building "B" to be used as a fire lane [Article 1361.03(L)] as requested with conditions; seconded by Herbst. Motion carried unanimously.

NOTE: The following condition was included in the motion.

1. That the petitioner continue to work with City Administration during building permit application concerning the planning, design, and siting of street trees along University Avenue; the planning, design, and construction of the shared pedestrian way and fire lane; and, coordination with planned University Avenue roadway improvements to ensure best public safety and urban landscape practices.

Fletcher read the Staff recommendations for V15-11.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V15-11 as revised; seconded by Herbst. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The nature of the variance relief granted by the Board herein should have no impact, positive or adverse, to public interest or adjacent property rights.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The emerging urban context of the University Avenue corridor, site development challenges resulting from steep slopes, and by-right front setback standards appears to require flexibility in planning, design, and constructing street trees along University Avenue, which will include tree pits and grates that must be designed with attention for pedestrians. The site's steep terrain requires significant retaining walls to "bench" the site, limits developable area, and increases per parking space development costs. The proposed development plan appears to maximize landscape areas at the periphery to buffer the site from the adjoining neighborhood and within the site's steepest slopes.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The current Sunnyside Development is outdated and underutilized. This variance will permit the maximum on-site parking spaces while increasing perimeter landscape/buffering. The steep terrain, fire truck access, fire truck turn around, and emergency egress area on Jones Avenue have decreased the available parking space areas. The developer met with the Wiles Hill Neighborhood Association prior to submission and wants to be good neighbor by ensuring that resident parking does not encroach into the adjoining neighborhood. By utilizing all available area for parking, the design professionals have increased the landscape/buffer on the perimeters and within the site's steepest

slopes.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

There appears to be a number of multi-family developments within the immediate area where landscape screening, buffer, and interior landscaping were not required prior to present related standards. There also appears to be limited space to provide requisite landscaping and meeting minimum parking requirements and parking design. Variance relief granted herein will ensure that landscaping is provided across the site's frontage on University Avenue as well as adequately buffering parking areas to preserve the enjoyment and quality of life of the adjoining residential property and within the site's steepest slopes.

Papandreas moved to approve V15-11 granting variance relief to permit the planting of trees along University Avenue with less than ten (10) to fifteen (15) feet tree trunk clearance from structures, building overhangs, walls, etc. [Article 1367.06(C)]; variance relief from reserving at least five (5) percent of the parking areas (upper parking area, parking area between Buildings "A" and "C", or the off-site parking facility) for landscaping [Article 1367.08(B)(2)]; variance relief from providing one (1) terminal landscape island between Quay Street and an adjoining parallel parking space at least 130 square feet in area [Article 1367.08(D)(2)]; and, variance relief from providing landscaped islands of at least 130 square feet every ten (10) parking spaces for residential development [Article 1367.08(D)(3)] with conditions; seconded by Herbst. Motion carried unanimously.

NOTE: The following conditions were included in the motion.

1. That a terminal island, which may be less than 130 square feet, must be developed between Quay Street and an adjoining parallel parking space; and
2. That the petitioner continue to work with City Administration during building permit application concerning the planning, design, and siting of street trees along University Avenue to ensure best urban landscape practices and coordination with planned University Avenue roadway improvements, which may include reducing the number of street trees along University Avenue to ensure clear sight lines at the University Avenue driveway entrance.

Fletcher read the Staff recommendations for V15-15.

Shaffer made a motion to find in the affirmative for the all the Findings of Facts for V15-15 as revised; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Incorporating hardiplank, brick, and other materials in the proposed project will not be harmful to the public welfare or other improvements in the vicinity. The more durable products will last longer and need less maintenance than natural materials. The proposed development will improve the vicinity and hopefully spark future redevelopment in a somewhat blighted area on a primary street. Cladding will be similar/same as other multi-family projects in the Sunnyside Overlay District and vicinity.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

Structures in the vicinity and district have dictated exterior design and proposed cladding materials, such as hardiplank or cementitious siding. The Design Professionals have actively attempted to incorporate architectural designs that are fitting with the character of the area and are durable in a predominantly student-rental environment. All facades shall consist of brick, fiber cement siding and fiber cement panel. Cladding will be similar/same as other multi-family projects in the Sunnyside Overlay District and vicinity.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

It appears that the predominant architectural designs of the previously constructed developments located within the Sunnyside Overlay Districts and vicinity include the use of cementitious siding for a more durable cladding. Previous developments in the vicinity that have received the similar variance include, but are not limited to, 507 Beechurst Avenue, 146 Third Street, 152 Third Street, 103 Third Street, Glenlock North on University Avenue, and 300 Beechurst Avenue.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The proposed building materials appear to be within the fitting character of the University Avenue corridor. Market values of adjacent properties should increase with the proposed redevelopment and perhaps spark additional redevelopment and infill development in the area. The nature of the variance relief requested meets the spirit and intent of the zoning ordinance in that the cladding will be similar/same as other multi-family development in the Sunnyside Overlay District and vicinity.

Shaffer moved to approve V15-15 to permit the use of cement fiber paneling and lap siding and brick/stone veneer [Article 1361.03(P)(2)] as requested without conditions; seconded by Papandreas. Motion carried unanimously.

Fletcher read the Staff recommendations for V15-17.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V15-17 as revised; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Multi-family residential structures containing the required 60% of ground floor transparency does not exist within the area. Therefore, the proposed structure will have transparency more fitting with the architectural design of the surrounding buildings and those in the vicinity. The proposed transparency will not be harmful to surrounding property or improvements in the vicinity as building A & B will be situated above grade on University Avenue and Building C not visible from the primary street. It appears that the window recession on the brick façade will be four (4) inches and the remaining windows recessed appropriately for the building façade material to ensure desired shadowing and architectural uniqueness. This variance will not affect public health, safety, or rights of adjacent property owners in that the intent of this requirement is for commercial or mixed-use structures. The proposed building will improve the vicinity and possibly spark future redevelopment in a perceivably blighted area on a primary street. The proposed structure will have similar window recession as the surrounding buildings on University Avenue and in the vicinity.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The Design Professionals diligently worked to incorporate the required design concepts and vertical windows on the front façade facing University Avenue. It appears that this area of University Avenue is not currently conducive to commercial uses. The existing architectural style prevalent in the area does not permit the use of the required transparency of the ground floor façade located adjacent to University Avenue. Variance relief has been granted by the Board of Zoning Appeals for fenestration ratio and window recessing standards within the Sunnyside Overlay Districts. The proposed transparency matches or exceeds the built environment in the vicinity as building A & B will be situated above grade on University Avenue and Building C not visible from the primary street.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The proposed ground floor transparency appears to match or exceed the existing buildings and surrounding properties. It appears that most other structures within the vicinity and Sunnyside Overlay Districts do not meet the required 60% ground floor transparency for the front façade, recessed windows, or primary street frontage fenestration set forth in the Zoning Code. Previous redevelopment, such as Metro Properties, LLC, Glenlock North, and Moser Investment, on Beechurst Avenue, have received the same variances being proposed. It appears that the proposed building will have similar window recession as is dominant in the architectural style of Sunnyside area. The design professionals worked diligently to incorporate window recession on the brick façade, four (4) inches, as well as recessing the remaining windows appropriately for the building façade material. This unique design will ensure the desired shadowing and sense of place that is lack on University Avenue. The following is a table outlines fenestration along the primary façade of University Avenue:

Building	Primary Façade Fenestration	Ground Floor Fenestration
Community Center	42%	45%
Building A	18%	18%
Building B	16%	19%

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The Design Professionals have incorporated the required design concepts and vertical windows on the front façade, along with window recession on the brick façade. It appears that the remaining windows have been recessed appropriately for the building façade material to ensure desired shadowing. In this instance, it does not appear that the lack of recessed window openings add to or detract from aesthetics and would not be noticeable on the steep terrain and heavily traveled corridor of University Avenue. Although variance relief to the minimum window/fenestration standards in the Sunnyside Overlay Districts has been approved by the Board, the circumstances of the site in terms of topography and use appears unique warranting relief. The spirit and intent of the Sunnyside Overlay Districts' design and performance standards are observed and substantial justice done thereby mitigating adverse impacts to the immediate built environment. Multi-family residential structures containing the required 60% of ground floor transparency does not exist within the area. Therefore, the proposed structure will have transparency more fitting with the architectural design of the surrounding buildings and those in the vicinity. The proposed transparency will not be harmful to surrounding property or improvements in the vicinity as building A & B will be situated above grade on University Avenue and Building C not visible from the primary street.

Papandreas moved to approve V15-17 granting variance relief from meeting minimum ground floor transparency [Article 1361.03(E)]; from minimum fenestration ratio standards for front façade and ground floor [Article 1361.03(O)(1)]; and, from recessing windows 4-8 inches [Article 1361.03(O)(6)] as requested without conditions; seconded by Herbst. Motion carried unanimously.

Burton reminded Mr. Carole that the Board's decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

ANNOUNCEMENTS: None

VI. ADJOURNMENT: 7:57 PM

MINUTES APPROVED:

April 15, 2015

BOARD SECRETARY:


Christopher M. Fletcher, AICP